

Contracts II
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Spring 2003

Sample Exam Question #5

Following telephone negotiations leading to an oral agreement between the parties, Mercury Rising (“Mercury”), a manufacturer of thermometers, faxed a purchase order to the Glass Manufacturie (“GM”), a glass manufacturer, on October 1, 2001, for precision glass tubing to be used in indoor and outdoor thermometers to be manufactured by Mercury. Mercury ordered 5,000 1-foot lengths of glass tubing, at a price of \$5.00 per foot. During their negotiations, GM informed Mercury that GM would have to specially manufacture the tubing in order to meet Mercury’s specifications; and, therefore, would need at least six weeks to fill Mercury’s order. Mercury’s purchase order also indicated that GM should deliver the glass tubing at GM’s expense no later than November 30, 2001. GM loaded the tubing on a truck routed to Mercury on November 12, 2001.

Before the goods reached Mercury, GM found another buyer willing to pay a better price, stopped the shipment and rerouted it to the other buyer. On November 15, 2001, GM notified Mercury that it would not honor Mercury’s purchase order. Mercury wants to sue GM for breach of contract.

Do Mercury and GM have an enforceable contract for the glass tubing?